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Address by the president of the American association for labor legislation, Henry W. Farnam, at the annual meeting, Dec. 28th, 1909.
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FARNAM, HENRY W.

LAW OR LEGISLATION AND ECONOMIC PROGRESS

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ADDRESS BY THE PRESIDENT

OF THE

American Association for Labor Legislation

HENRY W. FARNAM

AT THE ANNUAL MEETING

DECEMBER 28TH, 1909.

Business

269

F 23

GOVERNMENT
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LABOR LEGISLATION AND ECONOMIC PROGRESS.

The natural world, if left to itself, is generally in a state of more or less perfect equilibrium. Those plants and those animals survive which are best adapted to their environment; the others perish. Each species has its enemies which prevent any one of them from monopolizing the earth and which, in turn, are held in check by their own enemies. As soon as civilized man steps upon the stage, however, this harmony of nature is disturbed, and the intruder may be positively destructive of those forms of life which are not able to adapt themselves to him or to minister directly to his wants. A good illustration of this is given by Theodore Roosevelt in his "Hunting Trips of a Ranchman" with regard to the buffalo.

"The most striking characteristics of the buffalo," he says, "and those which had been found most useful in maintaining the species, until the white man entered upon the scene, were its phenomenal gregariousness, . . . its massive bulk and unwieldy strength. . . . Its toughness and hardy endurance fitted it to contend with purely natural forces: to resist cold and the winter blasts, or the heat of a thirsty summer, to wander away to new pastures when the feed on the old was exhausted, to plunge over broken ground, and to plough its way through snow drifts or quagmires. . . .

"But the introduction of the horse, and shortly afterwards, the incoming of white hunters carrying long-range rifles, changed all this. The buffaloes' gregarious habits simply rendered them certain to be seen, . . . their speed was not such as to enable them to flee from a horseman; and their size and strength merely made them too clumsy either to escape from or to contend with their foes."*

This is the first effect of civilized man, but not the last. The book in question was written nearly twenty-five years ago, when

* Theodore Roosevelt, "Hunting Trips of a Ranchman," pp. 244-245.

the buffalo seemed to be on the point of extermination. Fortunately, as man becomes more enlightened, he begins to realize that in his struggle for the supremacy over nature, he may carry the contest too far for his own good. We now find that somewhat tardily civilized man is trying to save from extinction the few scattered specimens of the bison that have survived, and even by skillful crossing to endow domestic cattle with some of those good qualities of their wild cousins which have enabled them to cope successfully with the climate of the plains through so many generations. Thus the stage of domestication follows the hunting stage of civilization, and the crude and wasteful processes of natural selection are replaced by those of artificial selection.

Like Orlando in the Forest of Arden, civilized man begins the struggle for existence with a drawn sword and a threat.

"He dies that touches any of this fruit
Till I and my affairs are answered."

In time experience teaches him, in the words of the banished duke, that

"Your gentleness shall force
More than your force move us to gentleness."*

The course of man's dealings with nature is paralleled in his dealings with his fellow-men. Almost every new invention, almost every new process creates a power which is susceptible of abuse, or leads to changes in conditions which may be injurious to certain classes or certain interests. The pioneers of industry have much in common with the pioneers of the frontier. Even those improvements which seem altogether good may bring in some incidental evil, which, while not by any means counterbalancing the good, yet makes itself felt as something to be removed. A good example of this is seen in the homespun industry of some of the Scotch isles. The island of Harris has long been famous for the quality of its tweeds. The climate is, however, very wet and the sheep have been so subject to disease that it has been the custom to rub them with tar and grease to protect them from the cold. More recently

* "As You Like It." Act II, Scene 7.

an improved breed of sheep has been introduced which is able to resist the climate, but it is now found that the grease which protected the sheep also improved the quality of the wool, so that the newer fabrics are not as good as the old ones.* This is a common experience, not only in the history of inventions, but in the history of man's efforts to introduce higher forms of economic life and a higher kind of civilization.

The most important step upwards from savagery is to substitute the law of contract for the law of conquest, but as soon as violence is put down there is danger that the physical strength and the courage which were essential to existence in the ruder age will be lost or impaired. New dangers are also possible. If the law decrees that wealth shall be distributed, not as the result of brute force, but through free bargaining among producers, there is a possibility that the advantage will go, not to the man who produces the most, but to the man who is most unscrupulous in driving a hard bargain. It then becomes necessary to set up a new standard and to prohibit not only positive fraud, but also all contracts which may be so unequal in their operation as to discourage industry and promote trickiness. Without violence, it is possible so to frame a labor contract that the worker shall become virtually the bondsman of the employer. Thus slavery and peonage have to be prohibited as contrary to public policy. But abolish slavery, and you abolish, with the right of exploitation, the obligation of the master to care for the worker in sickness and in old age. Docility and trustfulness, which may have been useful characteristics of the slave, are converted in the free man into that disregard of the future which we call improvidence, and the superannuated or sick worker, who has made no savings and has no family to care for him, constitutes a new problem. Relieve the sick and the aged by means of private charity or public relief, and you run the risk of developing the institutional pauper and the tramp, those sorry by-products of civilization, who will not support themselves, but whom charity will not suffer to starve, and who may not be put to forced labor without a violation of the constitutional prohibition of involuntary servitude.

These evils, which are observed so frequently in connection with efforts to improve social institutions, lead different minds

* Consular Reports, November, 1909.

to quite opposite conclusions. Some, exaggerating the incidental evils of progress, decry all efforts at betterment, and long for the good old times when there were no reformers. Others, realizing strongly the evils which grow up without regulation, think that reform has not been carried far enough and advocate some extreme remedy such as socialism. In view of the difficulties which seem to attend both action and inaction, we naturally ask, if there is no principle based upon experience which will enable us so to steer the Ship of State as to avoid both the Scylla of conservatism and the Charybdis of radicalism.

In seeking such a principle, the first thing to realize is that we are living in a highly dynamic period of the world's history. We are so accustomed to change, that we sometimes do not realize all that it means or the great contrast which exists between the rate of change of the present day and any rate which has existed in any previous period of the known history of the world. These changes are seen not only in the endless improvements in mechanical processes with which the great inventions of the eighteenth and nineteenth centuries have made us familiar. More recently this spirit of progress has taken hold of what throughout history has been the most conservative of callings, and agriculture is now stimulated and vitalized by the application of science. New types of plants and animals are introduced in order to meet peculiar conditions; new methods of farming are devised by which dry lands, which have hitherto been considered infertile, are impressed into the service of an increasing population. The really significant thing with regard to these and other improvements is not that they are numerous and far-reaching, but that they are being deliberately planned. They are no longer the happy inspiration of the casual man of genius, they are often the outcome of a course of study deliberately undertaken with a definite end in view. Such establishments as the Carnegie Institution of Washington and the Sage Foundation, the agricultural experiment stations of the several States, and many departments of our universities and schools of agriculture, are not only pushing forward our knowledge of nature and her processes, but determining in advance the lines on which progress shall be made.

An interesting illustration of the tendency to anticipate discoveries is seen in the recent history of polar exploration. For

centuries the difficulties of reaching the North Pole seemed almost insurmountable. One expedition after another had been undertaken only to write a new chapter in the history of failures. When, during the summer of 1909, it was announced that two explorers had independently succeeded in accomplishing this feat, it was also disclosed that each had contracted in advance with certain newspapers for the exclusive right to publish an account of the discovery which at the time of making the contract was still problematical. Two things are significant in this episode; the first is the eagerness with which discovery is pursued; the second, the readiness to use a still unmade discovery as the basis of a property right. And if, as now seems probable, one of these expeditions was partly fictitious, this would only make the illustration more striking, as showing the impalpable foundation upon which a property right may be built up. The art of aerial navigation is still in its infancy, and yet an insurance company advertises itself as prepared to underwrite aerial risks. Every one of the fifty or sixty thousand patents applied for in our country in a single year represents a desire on the part of someone to effect a change in methods of production and to use it as the basis of some property right.

If we accept this general fact of change, we must now analyze its manifestations in order to study more closely its bearings upon labor legislation. Professor J. B. Clark, in his suggestive study of "Economic Theory as Applied to Modern Problems," enumerates five elements as characteristic of a dynamic society: (1) An increase in capital. (2) An increase in population. (3) Changes in the methods of production. (4) Changes in the methods of organization. (5) Changes in consumers' wants.*

If we consider each of these five features of economic progress, we shall see that each one of them involves some new problems affecting labor. Many of these, fortunately, solve themselves; many others do not, and the experience of a century has proved that in, at least, many cases some form of legislation is necessary in order to prevent the incidental evils of progress from being perpetuated and aggravated. Let us take them up seriatim.

* Clark: "Essentials of Economic Theory," pp. 203-206.

1. Increase in capital tends to make large aggregations of wealth, which by their very size weaken the personal element involved in the relation of employer and employed. The simple, almost patriarchal, expression "master and servant," which served as the rubric of the law on these subjects in the time of Blackstone and indeed was not superseded in England as a legal term until 1875, is no longer applicable to modern industry, nor are old methods of bargaining satisfactory. New machinery must be devised to facilitate collective bargaining and to mitigate the effects of collective disagreement.

2. The increase in population often involves a crowding in industrial centers with an increase in disease, which must be dealt with by tenement house laws and sanitary measures. The increase of population combined with modern methods of transportation leads to the amazing migration of modern times, which, in turn, creates new difficulties. To prevent the spread of contagious diseases, to prevent the abuse of the newcomers, some restrictions have to be placed by law, not to stop, but to control this flood of immigration.

3. Changes in the methods of production, involving, as they do, more powerful and more complicated machines, bring many evils. In the early days of the factory system, the displacement of skilled labor by unskilled was the most obvious injury felt by the workers. At the present time we are more concerned, because better acquainted, with the remoter and indirect effects of the age of machinery. We see new causes of accident, new kinds of industrial diseases, combined with a greater difficulty of securing the individual worker against the effects of accident and disease. Long experience has shown that these particular difficulties do not correct themselves, and one of the greatest problems in labor legislation at the present time is, on the one hand, to diminish accidents and disease, and on the other, to provide some form of compensation or some form of insurance for those who are their victims. Still more important, if possible, is the effect of machinery upon the children and therefore upon the workers of the future, and this, being comparatively remote and not realized for one or two generations, is the most difficult problem for the individual to solve. Government intervention seems the only agency sufficiently powerful and sufficiently gen-

eral to save a country from the deterioration of its human capital.

4. Changes in organization tend on the whole to give a new advantage to capital. It is now possible for a single company or combination of companies to be spread out over many states or many continents. This, while it makes for efficiency, also creates a power which may be abused and results in a demand for laws putting upon capital new responsibilities in the interests of its employees. It above all points to the necessity of interstate and international labor legislation. With the aid of the International Association for Labor Legislation, a number of international treaties of great importance have been made, one of the most recent of which is a treaty between France and Great Britain, giving the workers of those countries reciprocal advantages in obtaining compensation for accidents.

5. Changes in consumers' wants create an artificial instability of business which shows itself in alternating periods of activity and stagnation. The one tends to produce overexertion, the other, unemployment, and each demands legislation.

It will be noticed that in each of these five cases the main purpose of the legislation in question is to prevent some injury to the human beings for whose sake economic progress exists and on whose efficiency its continuance depends. We should, therefore, add to the five elements of a dynamic society which have been enumerated, a sixth, which has been comparatively neglected in the past, but which may prove in the future to be the most important of all. I refer to an improvement in the quality of the population itself. This is not altogether a dream. The average duration of the human life has within a century been decidedly lengthened in many of the leading countries of the world. In England and Wales, for instance, the average duration of life among males in 1838 to 1854 was $39 \frac{9}{10}$ years, in 1891 to 1900, $44 \frac{1}{10}$. In Sweden the average duration has increased from $39 \frac{5}{10}$ in 1816 to 1840, to $50 \frac{9}{10}$ in 1891 to 1900. Our statistics do not enable us to make general statements for the United States as a whole, but in several of the States the same tendency shows itself.*

* Fisher: "Report on National Vitality," 1909, pp. 18, 19.

Many diseases and many accidents are now recognized as clearly preventable. There is every reason to believe that by proper care human life can be lengthened, disease and accidents diminished, and the physical strength of the population improved; but, in order to bring about this most important element of progress, the State itself, which alone has an interest extending beyond that of the individual lifetime, must intervene in order to prevent well-recognized causes of retrogression and also to promote those elements which make for improvement.

In this process, mistakes are pretty sure to be made. Eugenics has not yet reached the position of an exact science. All legislation that is passed with good intentions does not produce the desired results. The point to be emphasized is that economic progress in itself involves inevitably in each of its elements some form of labor legislation. As long as change continues, we must expect that labor legislation will be necessary. If the laws of the Medes and Persians were immutable, it was because their economic life was stagnant. We should not forget, however, that the oriental politicians who are responsible for introducing this tradition into literature invoked the immutability of the law on behalf of a brand new measure of their own devising, the purpose of which was to check reform by casting the reformer into a den of lions. For according to the prophet Daniel, "All the presidents of the kingdom, the governors, and the princes, the counsellors, and the captains, have consulted together to establish a royal statute, and to make a firm decree, that whosoever shall ask a petition of any god or man for thirty days, save of thee, O king, he shall be cast into the den of lions. Now, O king, establish the decree, and sign the writing, that it be not changed, according to the law of the Medes and Persians, which altereth not."* At the present day, there are no more ardent advocates of the immutability of the law, none who more zealously urge that things be left alone, than those the value of whose property rights rests upon some comparatively recent law, such as a liberal charter or a high import duty.

This conception of labor legislation, if it could be generally entertained by our legislators and the public, would lead to certain important, practical results.

* Book of Daniel, Chapter VI, Verses 7, 8.

1. Labor legislation would be less in quantity and better in quality. A measure adopted for what seems an emergency is almost always hastily drawn and soon requires amendment. As soon as it is recognized that a certain type of legislation results from permanent conditions, more care will be bestowed upon it, and the changes will be fewer.

2. Legislation would also on the whole be more prompt. Certain general effects of industrial progress are well known by the experience of other States. These are often not corrected, until they have become so flagrant that they are taken up by philanthropists or trades unions, and corrective measures are then passed under pressure without due study. Legislation is often so afraid of crossing its bridges before it comes to them, that it does not keep them in decent repair.

3. Laws would be more uniform, if labor legislation were recognized as resulting from certain general economic conditions which are universal, or nearly so. More care would be taken to secure harmonious action between different countries and different States in the same federation.

4. Labor laws would be less frequently the expression of class feeling. Many bills which excite prejudice on this ground would be recognized as being really in the general interest. The courts, too, might perhaps find it easier to distinguish between enactments which are really class legislation and as such condemned by constitutional principles, and those laws which, while applying to certain definite groups, are in reality passed for the benefit of all.

5. The recognition of labor legislation as a permanent feature of our statutes would make it more consistent, because the very thought of adapting it to changes in economic conditions would force us to think more of those economic ideals which underlie subconsciously most social legislation, but are not always recognized or steadily followed.

Each great period of the world's history has had some such economic ideal, which, whether or not formulated in words, has become a part of the *mores* of the time and country and has guided the law in its main features. Under the Feudal System, for instance, society was divided into horizontal strata, based mainly on their relation to land and involving specific duties as

well as rights. The Guild System dovetailed quite properly with this system, although strictly not a part of it, since under it the mechanics of the cities were classified and their places definitely determined, the crafts themselves being more or less hereditary. Whatever the merits or demerits of this system, it was one of order rather than one of freedom, one of conservatism rather than of progress.

The economic ideal of the United States is very different from this. It may not be easy to define it in a few words, but its most concise expression is perhaps found in that part of the preamble of the Federal Constitution which states, after enumerating certain political purposes, that its object is "to promote the general welfare and secure the blessings of liberty to ourselves and our posterity." Our ideal is clearly not a caste system, nor even a hierarchy of functions such as existed under the Feudal System. It is a system of freedom which implies equality of opportunity for all. This does not mean anarchy, for it is a liberty which brings blessings. It is not the paper liberty of a phrase. It is, moreover, a liberty of the race, not of the individual. All this implies, therefore, a liberty so regulated as to prevent one individual or one group from abusing their liberty to the harm of others.

This policy, though unfortunately not always realized, is seen in many typical pieces of legislation, both Federal and State. The public land policy of the United States is based upon the idea of putting the land into the hands of small farmers, therefore preventing its monopolization by a few. The Homestead Exemption laws of our States interfere with freedom of contract in the interest of the family. The Federal Government introduced within the first few years of its existence a system of caring for seamen of the merchant marine in case of sickness by means of what would now be called compulsory sick insurance.* This remarkable piece of labor legislation, enacted in 1798, anticipated by nearly ninety years the introduction of general compulsory sick insurance by Germany, showing that even in those early days of weakness and decentralization

* For a full history of the Marine Hospital Service the writer is indebted to a still unpublished monograph on the subject, written by Dr. A. M. Edwards for the Carnegie Institution.

the United States was ready to practice social politics, when the practicability and the necessity of it was apparent. If a few years earlier Alexander Hamilton advocated a protective tariff, partly on the ground that it would introduce the factory system and thus secure the employment of children "of a tender age,"* this was not because of any desire to break down the health of the population, but simply because the evils of the factory system were not appreciated as were the dangers of the sailor's life.

We are fortunate in this country in having an ideal clearly expressed and pretty generally accepted, and it is this ideal which must give consistency to labor legislation. But it is a consistency of aim, not of words, that we must aim at. A navigator might seem vacillating to a landlubber who observed that he sailed now on the port tack and now on the starboard tack and constantly changed his helm. But through all of the apparent changes he is working steadily against the wind toward his port. Labor legislation must likewise adapt itself to the particular exigencies of the times, maintaining always as its final purpose in the United States, to secure the blessings of liberty for ourselves and our posterity. Its very prohibitions are in the interest of a greater liberty, just as the traffic regulations of a great city put restrictions upon the individual driver for a time in order to secure a freer circulation for the traffic as a whole.

The movement for more intelligent labor legislation is, as our association has often stated, but a part of the great movement for the conservation of our natural resources. But in the construction of the irrigation works which are already reclaiming so many square miles of land and turning bad lands into fertile farms, the first step is the building of a dam. There are few persons now so shortsighted as to suppose that these dams are intended to prevent the water from reaching the arid plains. Every one knows perfectly well that they are the very first condition of an adequate water supply. Likewise some restrictive legislation as applied to labor is often the condition of real economic freedom. It means that man is at last learning to apply to himself those principles of domestication, preservation, and improvement which he applied to his live stock, when he emerged from the hunting stage of existence.

* Report on Manufactures, 1791.

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Labor Legislation and Economic Progress

Marianne J. Baldwin
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